

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

*Minnesota State Law Library
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

(d). Vendors of agricultural seeds shall be required to attach one tag or label herein designated to each container described herein for seed sold, offered or exposed for sale.

(e). The commissioner of agriculture, dairy and food is hereby authorized and it shall be his duty to administer and enforce this act and to that end he may promulgate and enforce such regulations as in his judgment shall be necessary; he shall investigate the sale, transportation, distribution and adaptation of agricultural seeds in Minnesota as provided by the Pure Seeds Act, Chapter 387, Session Laws of 1927, and subsequently amended and as hereinafter provided. He shall employ such agents and assistants as are necessary to execute the requirements of this act, none of whom, except those who are employed on a regular or full-time basis, shall come within or be governed by the provisions of the act creating the Department of Civil Service or any amendments thereof, and fix their compensation. He shall have the authority to publish information, records, etc., relative to the administration and records pertaining to the work performed under this act.

(f). All fees and moneys collected from the sale of tags or labels herein referred to shall be deposited in the state treasury as other departmental receipts are deposited and shall be credited to and become a part of the "Seed Act Account," created by Section 2(a) Chapter 387, Session Laws of 1927, for the pur-

pose of defraying the expenses of administrating and enforcing of this act. (Act Apr. 26, 1941, c. 472, §2.)

3957-29. Effective date of act.—The enforcement of this act shall become effective on and after August 1st, 1941, and for the purpose of the preparation of tags or labels here provided for and for other matters in connection with the administration and execution of this act the commissioner is hereby authorized to use up to One Thousand Dollars from another fund in the same division, that is, the Division of Weeds and Seeds, that shall be replaced as soon as the fund is made available from the passage of this act. (Act Apr. 26, 1941, c. 472, §3.)

3957-30. Addition to pure seeds act.—Nothing in this act shall in any manner affect, change, modify or amend the purpose, meaning and enforcement of the Pure Seeds Act, Chapter 387, Session Laws of 1927 and subsequently amended, but shall be in addition thereto. (Act Apr. 26, 1941, c. 472, §4.)

SOFT DRINKS AND OTHER NON-ALCOHOLIC BEVERAGES

3965-20. Same—Licensee shall not display federal retail tax stamp—Violation a misdemeanor.

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. Op. Atty. Gen., (218J-3), Sept. 28, 1939.

CHAPTER 21A

Regulation of Manufactures and Sales

SALE OF FIREWORKS

3976-17a. Definition of term "fireworks."—As used in this act the term "fireworks" means any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, or other fireworks of like construction and any fireworks containing any explosive or inflammable compound, or any tablets or other device containing any explosive substance and commonly used as fireworks. The term "fireworks" shall not include toy pistols, toy guns, in which paper caps containing 25 hundredths grains or less of explosive compound are used and toy pistol caps which contain less than 20 hundredths grains of explosive mixture. (Act Apr. 8, 1941, c. 125, §1.)

3976-17b. Sale or use prohibited.—Except as otherwise provided in this act, it shall be unlawful for any person to offer for sale, expose for sale, sell at retail, or use or explode any fireworks. (Act Apr. 8, 1941, c. 125, §2.)

3976-17c. Display—Permits.—This act shall not prohibit supervised public displays of fireworks by cities, villages, and boroughs, fair associations, amusement parks, and other organizations. Except when such display is given by a municipality or fair association within its own limits, no display shall be given unless a permit therefor has first been secured. Every application for such a permit shall be made in writing to the municipal clerk at least 15 days in advance of the date of the display. The application shall be promptly referred to the chief of the fire department who shall make an investigation to determine whether the operator of the display is competent and whether the display is of such a character and is to be so located, discharged or fired that it will not be hazardous to property or endanger any

person. The fire chief shall report the results of this investigation to the clerk and if he reports that in his opinion the operator is competent and that the display as planned will conform to safety requirements, including the rules and regulations of the state fire marshal hereinafter provided for, the clerk shall issue a permit for the display when the applicant pays a permit fee of two dollars. When the supervised public display for which a permit is sought to be held outside the limits of an incorporated municipality, the application shall be made to the county auditor and the duties imposed by this act upon the clerk of the municipality shall be performed in such case by the county auditor. The duties imposed on the fire chief of the municipality by this act shall be performed in such case by the county sheriff. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. The state fire marshal shall adopt reasonable rules and regulations not inconsistent with the provisions of this act to insure that fireworks displays are given safely. (Act Apr. 8, 1941, c. 125, §3.)

3976-17d. Selling at wholesale—Illumination or ceremonial purposes.—Nothing in this act shall be construed to prohibit any resident wholesaler, dealer, or jobber, from selling at wholesale such fireworks as are not herein prohibited; or the sale of any kind of fireworks for shipment directly out of the state; or the use of fireworks by airplanes and railroads, or other transportation agencies for signal purposes or illumination; or the sale or use of blank cartridges for a show or theatre, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations. (Act Apr. 8, 1941, c. 125, §4.)

3976-17e. State fire marshal or sheriff to seize all stock.—The state fire marshal or any sheriff, police officer, constable, or local fire marshal shall seize, take, remove or cause to be removed at the expense of the owner all stocks of fireworks or combustibles of-

ferred or exposed for sale, stored, or held in violation of this act. (Act Apr. 8, 1941, c. 125, §5.)

3976-17f. Offense.—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 8, 1941, c. 125, §6.)

3976-17g. Effective date.—This act shall take effect and be in force from August 1, 1941. (Act Apr. 8, 1941, c. 125, §7.)

SALE OF EXPLOSIVES

3976-17h. Definitions.—As used in this act:

(a) "Explosives" means gunpowders, powders, used for blasting, high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powder, and any chemical compound or any mechanical mixture containing any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or detonation of any part thereof may and is intended to cause an explosion, but shall not include fixed ammunition for small arms, firecrackers, or matches, when the individual units contain any of the articles above specified in such limited quantity or of such nature and in such packing that it is impossible to produce an explosion of such units to the injury of life, limb, or property, and shall not include fluid petroleum products, alcohol, ether, or compressed or liquefied gas.

(b) "Person" includes any natural person, partnership, association, or corporation.

(c) "Manufacturer" means any person who is engaged in the manufacture of explosives or who otherwise produces any explosive.

(d) "Dealer" means any person, not a manufacturer, engaged in the business of buying and selling explosives.

(e) "Licensing authority" means the adjutant general, the chief of police or other chief peace officer of a municipality, the sheriff of a county for all territory therein outside of municipalities, or other officer designated as a licensing authority for any specified territory by the governor. (Act Apr. 26, 1941, c. 474, §1.)

3976-17i. Explosives—Manufacture—License.—No person shall manufacture, possess, or deal in explosives without a license therefor as herein provided. (Act Apr. 26, 1941, c. 474, §2.)

3976-17j. Same—Sale—License.—No person shall sell, give, ship, deliver, or otherwise dispose of explosives to any person within this state who does not hold a license hereunder. (Act Apr. 26, 1941, c. 474, §3.)

3976-17k. Same—Manufacture, License.—

Subdivision 1. Application for a license to manufacture explosives shall be made to the adjutant general in such form as he shall prescribe, shall be verified upon oath, and shall state, among other things: (1) the name and address of the applicant, (2) the reason for desiring to manufacture explosives, (3) his citizenship, if the applicant is an individual, (4) if the applicant is a partnership, the names and addresses of the partners and their citizenship, and (5) if the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship.

Subdivision 2. Application for a license to engage in the business of dealing in explosives shall be made to the licensing authority of the county or municipality in which the applicant conducts his business in such form as the adjutant general shall prescribe, shall be verified upon oath, and shall state, among other things: (1) the name and address of the applicant, (2) the reason for desiring to engage in the business of dealing in explosives, (3) his citizenship, if the applicant is an individual, (4) if the applicant

is a partnership, the names and addresses of the partners and their citizenship, and (5) if the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship.

Subdivision 3. Application for a license to possess explosives shall be made in writing to the licensing authority of the city or municipality in which the applicant resides or has his regular place of business in such form as the adjutant general shall prescribe, shall be verified upon oath, and shall state, among other things: (1) the name and address of the applicant, (2) the reason for desiring the license to possess explosives, (3) his citizenship, if the applicant is an individual, (4) if the applicant is a partnership, the names and addresses of the partners and their citizenship, and (5) if the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship. (Act Apr. 26, 1941, c. 474, §4.)

3976-17l. Same—Application for license.—Applications for licenses shall be accompanied by the following fees, which shall be refunded if the application be denied: For a manufacturer's license \$25.00, for a dealer's license \$2.00, for a possessor's license \$1.00; provided, that if the license will expire within six months from the date of issuance, the fee shall be one-half of the regular license fee. All license fees shall be paid into the treasury of the state, county, or municipality served by the licensing authority. (Act Apr. 26, 1941, c. 474, §5.)

3976-17m. Same—Issuance of license.—Upon receipt of an application for a license, with the prescribed fee, the licensing authority shall issue the license applied for unless he finds that the applicant or any officer, agent, or employe of the applicant who is to be engaged in manufacturing, dealing in, or handling explosives, as the case may be, is not competent therefor, or lacks suitable facilities therefor, or has been convicted of a crime involving moral turpitude, or is disloyal to the United States; provided, that no license shall be issued for manufacturing, dealing in, or possessing explosives under any circumstances contrary to any law or local ordinance, nor shall any license be deemed to authorize manufacturing, dealing in, or possessing explosives under any such circumstances. In case of failure or refusal by the licensing authority to grant a license within two days after receipt of the application, the applicant may file a written demand for hearing thereon, which shall be held by the licensing authority within five days thereafter, unless the time be extended with the consent of the applicant. If the application be denied after hearing, the licensing authority shall make a written order stating the grounds of denial, and shall serve a copy thereof on the applicant. (Act Apr. 26, 1941, c. 474, §6.)

3976-17n. Same—Expiration of license.—Every license issued hereunder shall expire on the last day of the calendar year in which it was issued, unless sooner revoked. A limited license for any shorter time may be issued upon request of the applicant, subject to reduction of the fee as hereinbefore provided. (Act Apr. 26, 1941, c. 474, §7.)

3976-17o. Same—Records.—Every manufacturer and dealer shall keep a record of all explosives received, kept, or disposed of by him, showing the name and address of each person dealt with and the amount of explosives involved in each transaction. Such record shall be open for inspection by the licensing authority or his duly authorized agents and by all federal, state, and local law enforcement officers at all times. Any manufacturer or dealer shall mail or deliver to such licensing authority, agent, or officer, upon request, a written statement of such information from any such record as such authority, agent, or officer may require. (Act Apr. 26, 1941, c. 474, §8.)

3976-17p. Same—Report to adjutant general.—Forthwith upon issuing a license to deal in or to possess explosives, the county or municipal licensing authority shall mail to the adjutant general a report giving the name and address of the licensee and such further information from the application as the adjutant general may require. (Act Apr. 26, 1941, c. 474, §9.)

3976-17q. Same—Revocation of license.—Any license issued hereunder may be revoked after hearing by the authority issuing the same for any violation of or failure to comply with any provision of this act or upon any ground specified herein as cause for denying an application for a license. Written notice of such hearing shall be given to the licensee at least one week before the time fixed for hearing. Pending such hearing the licensing authority may, if he has reasonable cause to believe that grounds for revocation exist and that the public safety so requires, suspend the license forthwith by giving written notice of the suspension to the licensee, but no such suspension shall continue for more than ten days without a hearing unless the time be extended at the request or with the consent of the licensee. (Act Apr. 26, 1941, c. 474, §10.)

3976-17r. Same—Service of notice or order.—Any notice or order required to be served upon an applicant or licensee hereunder may be served upon him personally as provided by law for service of a summons in a civil action or by mailing a copy to him at the address stated in the application or at such other address as he may have designated in writing to the licensing authority. (Act Apr. 26, 1941, c. 474, §11.)

3976-17s. Same—Appeal from order.—Any person aggrieved by an order of a licensing authority, made after hearing, refusing to grant or revoking a license may appeal therefrom to the district court of the county in which the office of the licensing authority is located by serving a notice of appeal on the licensing authority and filing the same with the clerk of the court within fifteen days after service or mailing of notice of the order appealed from, together with a bond to the state in the sum of \$100.00, approved by the clerk, conditioned to prosecute the appeal with diligence and to pay all costs that may be adjudged. Upon application of the appellant and upon such notice to the licensing authority as the court may direct, the appeal shall be brought on for trial before the court, without a jury, at such time as the court may fix. The court shall try the issues de novo, and shall render judgment affirming the order appealed from or reversing the same and directing the issuance of a license, as the case may require. (Act Apr. 26, 1941, c. 474, §12.)

3976-17t. Same—Rules and regulations—Publication.—The adjutant general may prescribe such regulations as he may deem necessary and proper for the safekeeping or transportation of explosives or for carrying out the provisions of this act. Every such regulation shall be published once in a legal daily newspaper published in each city of the first class in the state and circulating generally in and about such city, and shall be filed, together with proof of such publication, with the secretary of state, and shall thereupon have the force of law. (Act Apr. 26, 1941, c. 474, §13.)

3976-17u. Same—Violations of act.—Every person who shall violate or fail to comply with any provision of this act with respect to manufacturing, possessing, dealing in, selling, giving, shipping, delivering, or otherwise disposing of explosives, or who shall knowingly make any false statement in any application, report, or other writing required or permitted to be filed with any licensing authority hereunder, or who shall knowingly make any false entry in any record required to be kept hereunder, shall be guilty of a gross misdemeanor, and shall be punished by imprisonment

in the county jail for a term of not more than one year, or a fine of not more than \$1,000.00 or by both. Every person who shall violate or fail to comply with any other provision of this act or any regulation made thereunder shall be guilty of a misdemeanor. (Act Apr. 26, 1941, c. 474, §14.)

3976-17v. Same—Contraband—Seizures—Confiscation.—Any explosives kept, transported, or otherwise disposed of in violation of any provision of this act shall be contraband, and may be seized by any licensing authority, sheriff, police officer, or other peace officer, with or without a warrant. Explosives so seized shall be held subject to the order of the district court in a criminal prosecution involving the same, or in a civil action to determine the disposition thereof. Such action may be brought by the attorney general or the county attorney in the name of the state. If the court finds that the explosives were not intended for any unlawful use, it shall order the same released to the owner, if he has or shall obtain the required license, or the court shall order such other lawful disposition of the explosives as the owner may request, provided, that in either case the owner shall furnish such security for the lawful disposition of the explosives as the court may require. Otherwise the court shall order the explosives confiscated in the name of the state. Confiscated explosives shall be sold or destroyed by the sheriff of the county as the court may direct. Proceeds of such sales shall be paid into the treasury of the county in which the proceedings are had. (Act Apr. 26, 1941, c. 474, §15.)

3976-17w. Same—Unlawful keeping—Search warrants.—A search warrant for explosives unlawfully kept, transported, or otherwise disposed of may be issued and executed in like manner as provided by law in the case of stolen property. (Act Apr. 26, 1941, c. 474, §16.)

3976-17x. Application of act.—The provisions of this act shall not apply to any of the armed forces of the United States or of this state, or to officers or employes of the United States or of this state or of any governmental subdivision thereof when handling or disposing of explosives in the course of their official duties under lawful authority. (Act Apr. 26, 1941, c. 474, §17.)

3976-17y. Severability clause.—The provisions of this act shall be severable, and if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application. (Act Apr. 26, 1941, c. 474, §18.)

3976-17z. Effective date of act.—This act shall take effect June 1, 1941; provided, that forms and regulations may be prescribed and licenses may be applied for and issued hereunder prior to said date, to become effective on said date, and this act shall continue in full force and effect until March 1, 1943. (Act Apr. 26, 1941, c. 474, §19.)

UNFAIR TRADE PRACTICES

PART ONE

3976-38. Discrimination unlawful.

Constitutional. *Green v. G.*, 102Pac(2d)(CalApp)452. The act is constitutional. *State v. Sears*, 103Pac(2d)(Wash)337.

South Carolina statute making it unlawful to sell commodities in general use at a lower rate to a purchaser in one section of a city than in another, held invalid because of indefiniteness of term "section", and because it did not permit vendor to make an allowance based on quantity sold. *State v. Standard Oil Co.*, 10SE(2d)(SC)778.

PART TWO

3976-40. Application of act.

State unfair sales practice law held valid exercise of police power, and violation thereof by sales of merchandise at less than cost with intent of injuring competition would be enjoined. *Carroll v. S.*, 14Atl(2d)(Conn)754.

A fair trade act prohibiting sales below cost for purpose or with effect of injuring competitors and destroying competition, held promotion of a policy within police power of state, and fixing of minimum prices in retail trade, because a reasonable means of furthering such policy, is not violative of due process, regardless of intent. *McElhone v. G.*, 292NW414. See *Dun. Dig.* 1646.

3976-41. Certain acts to be unfair discrimination.—Any retailer or wholesaler, engaged in business within this state, which sells, offers for sale or advertises for sale, any commodity, article, goods, wares or merchandise, at less than the cost thereof to such vendor, or gives, offers to give or advertises the intent to give away any commodity, article, goods, wares or merchandise, for the purpose or with the effect of injuring competitors and destroying competition, shall be guilty of unfair discrimination, and upon conviction shall be subject to the penalty therefor provided herein.

Any retailer or wholesaler who sells goods in any part of the state of Minnesota at prices lower than those exacted by said person elsewhere in the state of Minnesota, for like qualities and grades and where the effect of such lower prices may be substantially to lessen competition or tend to create a monopoly in any line of business, or to injure, destroy or prevent competition with the person selling at such lower prices, shall be guilty of unfair competition and subject to the penalties of this act; provided that nothing shall prevent differentials in prices in different localities which make only due allowances for differences in "cost of doing business" or "overhead expense" and in costs of delivery for such goods to different localities; nor differences in price made in good faith to meet legal competition of any other person in such locality.

The inhibition against sales below cost or locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this act, together with all amendments thereto. (As amended Act Apr. 21, 1941, c. 326, §1.)

Anti-Sales-Below-Cost Laws have been adopted in Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. (1940).

Anti-Discrimination Laws of General Application have been adopted in Arkansas, California, Colorado, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington, West Virginia, Wisconsin, and Wyoming. (1940).

A state under its police powers may regulate business for general welfare of public by prohibiting merchants from selling products below cost for purpose of injuring competitors and destroying competition. *People v. Black's Food Store*, 105Pac(2d)(Cal)361.

Plaintiff photoengraver could not enjoin and recover damages under California Unfair Trade Practices Act, providing that manufacturer could not sell below cost, where he did not show that cuts made by competitor had been sold below cost. *Johnson v. F.*, 107Pac(2d)(Cal App)959.

In action to enjoin sale of cigarettes below cost in violation of Colorado Unfair Practices Act if a particular method adopted by merchant in determining cost cannot, under the facts disclosed, be said to be unreasonable, and does not disclose an intentional evasion of the law, the method so adopted can be accepted as correct. *Dikeou v. F.*, 108Pac(2d)(Colo)529.

Colorado Unfair Practices Act is not a price-fixing law. *Id.*

Dispensing by grocery of gifts to customers was not an unfair practice where it was not shown that purpose was to injure competitors or destroy competition. *Miller's Groceteria Co. v. F.*, 109Pac(2d)(Colo)637.

That law permits specified sales in order to meet local prices of a competitor in "same locality or trade area" does not render it fatally indefinite. The phrases "same locality" and "trade area," while without precise meaning of their own, are common and susceptible of application by and to evidence. *McElhone v. G.*, 292NW(Minn) 414.

Held unconstitutional. *Commonwealth v. Z.*, 13At(2d)(Pa)67.

The act is constitutional. *State v. Sears*, 103Pac(2d)(Wash)337.

Under the proviso as to meeting legal competitive price one who sells in good faith to meet a price which he believes to be legal is not liable. *Id.*

Unfair Sales Act is designed to thwart disposition to engage in reckless competition by outlawing the "loss leader" as an instrument in merchandising. *State v. 20th Century Market*, 294NW(Wis)873.

A sale below cost is not a loss leader sale unless it is used with intent or the effect of inducing purchases, diverting trade from a competitor, or otherwise injuring him. *Id.*

3976-42. Definitions.—The term "retailer" as used herein shall mean any person, partnership, firm, corporation or association, foreign or domestic, selling any commodity, article, goods, wares, or merchandise to the consumer and not for the purpose of resale in any form.

The term "wholesaler" as used herein shall mean any person, firm or corporation, partnership, association, business trust, or any unincorporated organization selling or supplying any commodity, article, goods, wares, or merchandise to retailers, industrial buyers, restaurants, institutions or the selling on the part of one wholesaler to another wholesaler. Creameries, canneries and other processors of agricultural products are defined to be manufacturers or producers and not included within the meaning of the term "wholesaler" as defined in this act.

The term "cost" as applied to the wholesaler or retail vendor shall mean:

1. The actual current delivered invoice or replacement cost whichever is lower, not including customary cash discounts, plus the cost of doing business at said location by said vendor.

The term "customary cash discounts", as used in this Act, means any allowance, not exceeding two per cent, whether a part of a larger discount or not, made to the wholesale or retail vendor, where the wholesale or retail vendor pays for merchandise within a limited or specified time.

2. Where a manufacturer publishes a list price and discounts, in determining such "cost" said manufacturer's published list price and discounts then currently in effect plus the cost of doing business by said vendor shall be prima facie evidence of "cost."

The "cost of doing business" or "overhead expense" is defined as all current costs of doing business incurred in the conduct of such business and must include without limitation the following items of expense:

Labor, including salaries and bonuses of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising, and other fixed and incidental expenses.

The "cost of doing business," including without limitation the aforesaid items of expense, incurred in the conduct of such business during the calendar year or the 12 months immediately preceding any alleged violation of this act, or in the event that any retailer or wholesaler shall have been engaged in business within the State for a shorter period of time, then such cost for such period of time immediately preceding any alleged violation of this act shall be prima facie evidence of "cost" as herein defined.

Any sale made by the retail vendor at less than 8 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 8 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act.

Provided, however, that no prosecution shall be had or any action at law for damages or injunctive relief shall lie where the vendor sells at a price not less than 15 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price or in the absence of

such a list price, at not less than 15 per cent above the current delivered invoice or replacement cost.

Any sale made by a wholesale vendor at less than 2 per cent above the manufacturer's published list price, less his published discounts, where the manufacturer publishes a list price, or in the absence of such a list price, at less than 2 per cent above the actual current delivered invoice or replacement cost, for the purpose or with the effect of injuring competitors or destroying competition, shall be prima facie evidence of the violation of this act. (As amended Act Apr. 21, 1941, c. 326, §2.)

It is not unreasonable to define cost as "the actual current delivered invoice or replacement cost whichever is lower plus the cost of doing business at said location by said vendor," nor is it unreasonable to make manufacturers' published list prices, less current discounts, plus cost of doing business, "prima facie evidence" of cost to retailer, nor to make cost of doing business for twelve-month period immediately preceding prima facie evidence of current cost, nor to make a sale at less than 10% above manufacturer's published list price, less discounts, or in absence of such list price, at less than 10% above current delivered invoice or replacement cost, for purpose or with effect of injuring competitors, prima facie evidence of violation of law. *McElhone v. G.*, 292 NW414.

Party charged with violation may not as a defense allege and show that particular item of merchandise may be segregated from entire business for purpose of allocating as to it "cost of doing business", since there is a common overhead expense that cannot be well apportioned to items of merchandise included in entire business. *McFadden Lambert Co. v. W.*, 296NW18.

Definition of "cost," held sufficiently certain. *State v. Sears*, 103Pac(2d)(Wash)337.

3976-44. Cost surveys may be deemed competent evidence. [Repealed.]

The provision for cost surveys is a rule of evidence and is valid. *State v. Sears*, 103Pac(2d)(Wash)337.

3976-45. Exceptions.—The provisions of Mason's Supplement 1940, Sections 3976-41, 3976-42, as amended by this act, and Mason's Supplement 1940, Section 3976-43 shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in case of the sale of seasonal goods or merchandise where style is the paramount feature or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the legal prices of a competitor selling the same commodity, articles, goods, wares or merchandise in the same locality or trade area. (As amended Apr. 21, 1941, c. 326, §3.)

(d). Does not discriminate unfairly between retailers who do business on a "cash and carry" basis, with low overhead cost, and others with higher overhead, because it expressly permits sales below cost "in an endeavor made in good faith to meet local prices of a competitor." *Fredricks v. B.*, 292NW420.

PART THREE

3976-46. Violations—Penalties.—Any person, firm or corporation, whether as principal, agent, officer, or director for himself, or itself, or for another person, firm or corporation, wilfully violating the provisions of Mason's Supplement 1940, Sections 3976-41, and 3976-42, as amended by this act, and Mason's Supplement 1940, Sections 3976-38 and 3976-43 shall be guilty of a misdemeanor.

Any person who either as director, officer or agent of any firm or corporation or as agent of any person violating the provisions of Mason's Supplement 1940, Sections 3976-41, and 3976-42, as amended by this act, and Mason's Supplement 1940, Sections 3976-38 and 3976-43 knowingly assists or aids, directly or indirectly, in such violation, shall be responsible therefor equally with the person, firm or corporation for

whom or which he acts. (As amended Act Apr. 21, 1941, c. 326, §4.)

Section was listed in title of act as passed and approved. *Fredricks v. B.*, 292NW420.

3976-47. Remedies—Injunction at suit of persons injured—Damages—Remedy at law—Privilege of party as witness.—(a) In addition to the penalties provided in this act, the courts of this state are hereby vested with jurisdiction to prevent and restrain violations of this act. Any person, partnership, corporation or association damaged or who is threatened with loss or injury by reason of a violation of this act shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this act and for the amount of the actual damages to him if any. In order to obtain such injunctive relief it shall not be necessary to allege or prove that an adequate remedy at law does not exist.

(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and documents, in any case or proceedings instituted or brought under the provisions of Mason's Supplement 1940, Sections 3976-37, 3976-38, 3976-39, 3976-40, 3976-43, 3976-48 and 3976-49, and Mason's Supplement 1940, Sections 3976-41, 3976-42, 3976-45, 3976-46, and 3976-47, as amended by this act, or in obedience to a subpoena, in any such case or proceedings, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, in any such case or proceedings, or in obedience to a subpoena, in any such case or proceedings. (As amended Act Apr. 21, 1941, c. 326, §5.)

Question whether law attempts unconstitutionally to compel self-incrimination discussed but not determined. *McElhone v. G.*, 292NW414. See *Dun. Dig.* 10337.

New York Public Service Commission has no jurisdiction of complaint for unfair trade practices, and aggrieved person must resort to courts. *City Ice & Fuel Co.*, 23NYS(2d)376, 260AppDiv537, dism'g appeal 173Misc 534, 18NYS(2d)588.

Injunction will not issue where evidence shows that plaintiff has not suffered injury, and defendant made money on the sales complained of; and if defendant's acts were criminal prosecution was the appropriate remedy. *Eckdahl v. H.*, 103Pac(2d)(Wyo)161.

(a). There was no error in issuing temporary restraining order in action to enjoin violation hereof. *McFadden Lambert Co. v. W.*, 296NW18.

MINIMUM RESALE PRICES—FAIR TRADE ACT

3976-51. Definitions.

Resale Price Maintenance Laws have been adopted in all states except Delaware, Missouri, Texas, and Vermont. (1940).

Since passage of the Tydings-Miller amendment to the Sherman Anti-Trust Act it can no longer be contended that Maryland fair trade act is in conflict with the Sherman anti-trust act forbidding contracts and combinations in restraint of trade and with respect to interstate commerce. *Schill v. R.*, 17Atl(2d)(MdApp)175.

3976-52. Certain contracts not to be in violation of law.

Under New Jersey Fair Trade Act plaintiff's refusal of offer of defendant made prior to suit to enter into contract for sale of plaintiff's products and to maintain minimum resale prices held fatal to plaintiff's right to an injunction restraining price cutting by defendant. *Charmley Drug Shop v. G.*, (CCA3), 113F(2d)247, rev'g (DC-NJ), 31FSupp410.

Plaintiff was not entitled to an injunction against sale by defendant for less than contract prices of merchandise which it had purchased before plaintiff adopted the policy permitted by the New Jersey Fair Trade Act of making contracts stipulating resale prices for its products. *Id.*

Temporary injunction, enjoining retailer from selling plaintiff's merchandise at prices less than those provided for in plaintiff's fair trade retail sales contracts in Minnesota, should be limited so as to apply only to such merchandise as was acquired by defendant subsequent to receipt of notice of existence of plaintiff's fair trade

contracts in Minnesota. *James Heddon's Sons v. C.*, (DC-Minn), 29FSupp579.

In suit to enjoin defendant from selling plaintiff's goods at prices less than those provided for in fair trade retail sales contracts, failure of complaint to show that the merchandise which was sold by the defendant was acquired by it after notice of the Fair Trade Agreements does not result in a defective pleading, but such matter may properly be set forth in answer. *Id.*

While wrong doing of other retailers is no defense of wrong doing on part of defendant, if discrimination is practiced in acquiescence of plaintiff in violations of its contracts by other retailers, a situation would be created depriving plaintiff's cause of equity. *Id.*

Retail sales agreement which provided that retailer would not sell plaintiff's products at a price less than minimum retail sales prices did not comply with statute permitting contracts which provide that buyers should not resell "except at prices stipulated by vendor", and was illegal under Louisiana statute. *Mennen Co. v. K.*, (DC-La), 37FSupp161.

Contract providing for minimum prices executed pursuant to Maryland fair trade act was not invalid because it contained exemption of books, sold for circulating or public service purposes, charitable or religious purposes, etc. *Schill v. R.*, 17Atl(2d)(MdApp)175.

Contract providing for minimum prices executed pursuant to Maryland fair trade act was not invalid because it contained provision that price was subject to change in discretion of publisher. *Id.*

Contract creating minimum price for copyrighted books is not an unreasonable monopoly. *Id.*

Maryland fair trade act authorizing contract establishing minimum retail prices is constitutional. *Id.*

Michigan fair trade act regulating resale prices of trade-marked articles complies with constitutional requirements. *Weco Products Co. v. S.*, 295NW(Mich)611.

When a producer operating under Fair Trade Act combines two trade-marked articles into a combination package for resale at a price less than aggregate price of articles if sold separately and independent of combination, he has abandoned his price structure as to those items which have been combined. *Bathasweet Corp. v. W.*, 15Atl(2d)(NJ)337.

Statute permitting owner of trade-mark to fix a schedule of prices and refuse to sell to retailers refusing to maintain minimum prices is valid. *Miles Laboratories v. O.*, 295NW(SD)292.

3976-53. What are violations.

Any one who willfully and knowingly advertises offers for sale or sells commodity at less than price stipulated in contract pursuant to Maryland fair trade act whether a person is or is not party to contract is engaged in unfair competition and is subject to suit on part of any person damaged. *Schill v. R.*, 17Atl(2d)(MdApp)175.

3976-54. Who may fix minimum prices.

Maryland fair trade act establishing minimum retail prices on commodities applies to copyrighted books. *Schill v. R.*, 17Atl(2d)(MdApp)175.

New York fair trade law limits right to fix prices to one whose trade-mark or brand or name is used in connection with the commodity. *Automotive Electric Service Corp. v. T.*, 24NYS(2d)733, 175Misc865.

3976-56. Unfair competition.

In suit to enjoin defendant from violating detailed prices stipulated in fair trade contracts, allegation that plaintiff's property rights in its trade name and trade-mark have been violated, and will be damaged within the state to an amount in excess of \$3,000, exclusive of interest and costs, was sufficient to bring suit within jurisdiction of federal court, placing burden on defendant to show want of jurisdiction. *James Heddon's Sons v. C.*, (DC-Minn), 29FSupp643.

Owner of trade-mark suing to restrain sale of trade-marked articles for less than minimum prices set out in contracts with other dealers was not entitled to equitable relief where it refused offer of resale of goods on ground that they had been purchased from others, thus refusing to do equity. *Weco Products Co. v. S.*, 295NW(Mich)611.

In a suit by a producer under Fair Trade Act, only minimum price provisions of contract made with retailers

are binding on those retailers who have not signed such contract. *Bathasweet Corp. v. W.*, 15Atl(2d)(NJ)337.

Under Fair Trade Act a signer of a price-fixing contract may be restrained from cutting prices at suit of one not signing such a contract, if he has clean hands. *Weisstein v. P.*, 22NYS(2d)510.

Under New York statute when price fixing contract has been entered into by person, firm or corporation whose trade-mark or brand or name is borne upon commodity, persons other than such person, firm or corporation may enjoin sales at prices less than those so fixed. *Automotive Electric Service Corp. v. T.*, 24NYS(2d)733, 175Misc865.

Right of retailer to sue. 24MinnLawRev139.

AUTOMOBILE DEALERS ANTI-COERCION ACT

3976-71. Manufacturers not to control financing of motor vehicles.

Anti-Coercion Laws have been adopted in Arkansas, California, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Minnesota, Montana, New Mexico, Ohio, Oregon, Tennessee, Utah and Wisconsin. (1940).

MANUFACTURE AND SALE OF TOKENS, SLUGS, CHECKS, ETC.

3976-86. Manufacture and sale of tokens, slugs, checks, etc., prohibited.—The manufacture, sale, offering for sale, advertising for sale, or distribution of tokens, checks, or slugs, similar in size and shape to lawful coin of the United States of America, with knowledge or reason to believe that such tokens, checks or slugs may be used in substitution for any such lawful coin in any vending machine, parking meter, service meter, coin-box telephone or other coin receptacle designed to receive or be operated only by lawful coin of the United States of America in connection with the sale, use or enjoyment of property, privilege or service, is hereby prohibited. (Act Apr. 9, 1941, c. 132, §1.)

3976-87. Five per cent smaller or five per cent larger token or checks salable.—No person shall manufacture, sell, or offer for sale or distribute any checks, tokens or slugs unless they shall be either five per cent larger or five per cent smaller in diameter than any lawful coin of the United States. (Act Apr. 9, 1941, c. 132, §2.)

3976-88. Knowledge and reason to believe—Proof.—In a trial of a defendant for violation of the provisions of this act, knowledge or reason to believe, within the meaning of this act, shall be deemed to exist upon the presentation of proof to the court that any county attorney, sheriff, or chief of police in the state, or a deputy or delegate of such officer, has given written notice to the defendant that tokens, checks or slugs of the kind manufactured, sold, offered for sale, advertised for sale or distributed by him are being used in substitution for lawful coin in the operation of any such coin receptacle or machine, provided that such notice shall have been given prior to the time of the manufacture, sale, offering for sale, advertising for sale or distribution of such tokens, checks or slugs for which the defendant is being tried. (Act Apr. 9, 1941, c. 132, §3.)

3976-89. Offense.—Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor. (Act Apr. 9, 1941, c. 132, §4.)

CHAPTER 21AA

Regulation of Motion Pictures

PREAMBLE:

WHEREAS, the motion picture industry is made up of three branches, namely, production, distribution and exhibition; and

WHEREAS, the production and distribution branches are dominated and controlled by eight major companies with great economic power and exhibition is accomplished through two classes of theatre owners, namely, those wholly owned or affiliated with the producer-distributors and the independent exhibitors; and

WHEREAS, the major producer-distributors, license, lease and distribute substantially all of the feature motion pictures exhibited in the state of Minnesota and the other states of the Union; and the needs of the independent exhibitor requires that he license or lease feature motion pictures from substantially all the major producer-distributors; and

WHEREAS, by reason of arbitrary terms and conditions imposed by the producer-distributors, the independent exhibitor has been: